tion to the carrier's common law liability, and that the rule governing this exception is not to be extended to apply where no choice of rates is given. The defendant cannot go outside the filed rates, and with no choice offered there is an illegal contract of limitation comparable to that in *Boston & Maine Rd. Co. Co.* v. *Piper,* 246 U. S. 439.

CONSTITUTIONAL LAW—EIGHTEENTH AMENDMENT—DOUBLE JEOPARDY.—Indictments under the National Prohibition Act, in five cases considered together. In two cases there had been convictions under a state statute more stringent than the national law; in the other three there had been convictions under municipal ordinances. *Held,* convictions under the state statute were a bar to indictments under the national law; those under the municipal ordinances were not a bar. *United States* v. *Peterson et al.,* and four other cases (C. C. A., 8th Circ., 1920), 268 Fed. 963.

The convictions under the ordinances were not a bar, since the state had not delegated its concurrent authority to the municipalities; but the convictions under the state statute were held to be a bar because it was not intended that one should be punished both under state and federal law for the same offense. There is some early authority for such a holding; see *Commonwealth* v. *Fuller,* 8 Met. 313; *Cueth* v. *Overby,* 3 Ky. Law 704, where it is said that conviction in one jurisdiction would be a bar to an indictment in another jurisdiction, since it is for the same offense. And in *Harlan* v. *People,* 1 Douglas 207, it was said that it logically follows, from the fact of concurrent power in the states and in the federal government to pass laws punishing counterfeiting, that conviction in either state or federal court is a bar to conviction in the other. But by the great weight of authority a single act may be a violation of the laws of both governments, and conviction or acquittal in the courts of one is no bar to prosecution in the courts of the other. *Cross* v. *North Carolina,* 132 U. S. 132, 139; *U. S.* v. *Barnhart,* 22 Fed. 285; *U. S.* v. *Wells,* 28 Fed. 522; *U. S.* v. *Palan,* 167 Fed. 991; see *Fox* v. *Ohio,* 5 How. 433; *Moore* v. *Illinois,* 14 How. 560; *U. S.* v. *Amy,* 24 Fed. Cas, 792, 810; *Ex parte Siebold,* 100 U. S. 341, 389. In the very nature of things, two sovereignties cannot have jurisdiction over the same *offense,* unless it is one arising under the law common to all, as the law of nations; see *U. S.* v. *Pirates,* 5 Wheat. 197. Neither government should be permitted to hinder the other in the enforcement of its own laws. Otherwise, where the policy of one differs from the policy of the other, one guilty of an offense against one sovereignty might plead in bar a conviction and comparatively light punishment inflicted by the other. *State* v. *Rankin,* 4 Coldwell 145; see *U. S.* v. *Barnhart, supra.* The criminal cannot complain, for he owes allegiance to both governments and is protected by both. See *State* v. *Moore,* 143 Ia. 240, 21 Ann. Cas. 63, with full note on whole subject, page 64. The jurisdiction which first has control over the subject matter of the offense, by comity, should continue to exercise jurisdiction until judgment, thus avoiding embarrassing conflict. *U. S.* v. *Wells, supra; U. S.* v. *Barnhart, supra.* Prior conviction may be taken into consideration

in determining punishment; *U. S.* v. *Palan*, 167 Fed. 991; but the record of a former acquittal should not even be introduced into evidence. *State* v. *Kenney*, 85 Wash. 441. In the cases cited it is clear that both the states and the federal government have "concurrent power" to make laws punishing the same acts; hence, they may be considered direct authority for violations against state and federal laws passed under the Eighteenth Amendment. For the meaning of "concurrent power" under the Eighteenth Amendment, see 19 MICH. L. REV. 329. In case of a state statute passed in aid of the national act itself, the holding of the court in the principal case might be correct; but the fact was that the state statute had been passed prior to the national act. And compare *U. S.* v. *Mason*, 213 U. S. 115. It should be noted that the "double jeopardy" provision in the Federal Constitution, Fifth Amendment, applies only to the federal courts. See *Fox* v. *Ohio*, *U. S.* v. *Barnhart*, *supra*.

CONSTITUTIONAL LAW—LEVER ACT—INDEFINITE OFFENSE.—Defendant was indicted under the Act of October 2, 1919, c. 80, 41 Stat. 397, commonly known as the Lever Act, for selling sugar at an unjust and unreasonable price. The act provides: "That it is hereby made unlawful for any person wilfully * * * to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries; to conspire, combine, agree, or arrange with any other person. * * * (e) to exact excessive prices for any necessaries * * * Any person violating any of the provisions of this section, upon conviction thereof, shall be fined not exceeding $5,000, or be imprisoned for not more than two years, or both * * *" On appeal to the Supreme Court it was *held* that the indictment had been properly quashed on the ground that the act under which the proceedings were instituted was so vague in its provisions as to what was thereby made an offense that it was unconstitutional. *United States* v. *L. Cohen Grocery Co.*, Adv. Ops., Feb. 28, 1921, No. 324.

For discussions of cases involving the validity of statutes defining acts amounting to an offense in terms in general as vague as those passed upon in the principal case, see 18 MICH. L. REV. 810; 19 MICH. L. REV. 218. See also 19 MICH. L. REV. 337, discussing one of the lower court decisions under the Lever Act. Many of the cases have involved regulations of speed and lights of automobiles. There is no question that the Lever Act left the matter pretty vague, but it probably is impossible to frame a statute on such subject that would be definite.

CONSTITUTIONAL LAW—REVIEW OF ACTION OF ADMINISTRATION BOARD.—A Wisconsin statute required that the approval of the application by the fire and police commission of a city should be secured before any person could engage in the business of a private detective. The standard of qualification prescribed by the statute for obtaining the license is that the applicant shall be a person of good character, competency, and integrity. The plaintiffs claimed that the statute gave the fire and police commission arbitrary power